Deutsche Bank

VIA E-MAIL

May 27, 2011

Communications Division
Office of the Comptroller of the Currency
Mail Stop 2-3
Attention: 1557-0081
250 E Street, SW
Washington, DC 20219

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the
Federal Reserve System
20th Street & Constitution Avenue, NW
Washington, DC 20551

Mr. Gary Kuiper
Counsel
Attention Comments, Room F-1086
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Information Collection
Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
Attention: 1550-0023
(TFR Schedule DI Revisions)

Re: Proposed Agency Information Collection Activities: Joint Notice and Request for Comment; Consolidated Reports of Condition and Income (FFIEC 031 and 041); **OCC:** 1557-0081; **FRB:** FFIEC 031 and 041; **FDIC:** 3064-0052; **OTS:** 1550-0023 (TFR: Schedule DI Revisions) – 76 *Fed. Reg.* 14460 (Mar. 16, 2011)

Ladies and Gentlemen:

Deutsche Bank Trust Company Americas ("DBTCA"), a state member bank that is a subsidiary of Deutsche Bank AG, Frankfurt, Germany, is pleased to take this opportunity to comment on the revisions to the Consolidated Reports of Condition and Income ("Call Report"), the Thrift Financial Report ("TFR"), and the FFIEC Reports 002 and 002S ("FFIEC Reports") (Call Report, TRF, and FFIEC Reports are hereinafter collectively referred to as the "Reports") as issued by the Office of the Comptroller of the Currency ("OCC"), the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation ("FDIC"), and the Office of Thrift Supervision (collectively, the "Agencies"). The Agencies' proposed revisions to the

Reports include several changes and new items to implement the FDIC Final Rule that redefines the deposit insurance assessment base.[1]

This letter summarizes DBTCA's concerns with the reporting of subprime consumer loans and leveraged loans, in future Reports, as defined in the Large Bank Pricing scoring model ("LBP Rule") adopted by the FDIC Board of Directors on February 7, 2011. Given the concerns DBTCA and its peers have with the LBP Rule's definitions for leveraged loans and subprime loans and the unforeseen burdensome effects of such definitions by the FDIC staff on the completion of future Reports, as detailed below, DBTCA urges the Agencies to delay implementing the use of the LBP Rule's definition of leveraged loan and subprime loan in all future Reports. The Agencies should delay implementation until the LBP Rule's definitions of leveraged loan and subprime loan have been adequately adjusted to alleviate the burdens that the adoption of these terms inadvertently imposed on institutions.

KEY CONCERNS

As part of the LBP Rule that is driving the proposed changes to the Reports, the FDIC made a slight change in the wording of the LBP Rule as compared to the LBP Notice of Proposed Rulemaking ("LBP NPR"). The LBP NPR provided that certain requirements "may" be taken into account when an institution subject to the LBP Rule determines whether a loan should be classified as a leveraged loan or subprime loan. DBTCA, after reviewing the LBP NPR was able to determine that such requirements would not greatly increase the burden of accurately completing its future Reports. However, in the LBP Rule, the FDIC amended the language of the LBP NPR and now requires that an institution subject to the LBP Rule "must" consider all loans meeting certain requirements be either classified as a leveraged loan or subprime loan. This subtle change has dramatically altered the reporting obligation of all institutions subject to the LBP Rule. Thus, this subtle change, which appears to have been perceived by the FDIC staff as only a minor difference, has instead now made the completion of future Reports by DBTCA and its peers extremely burdensome, if not practically impossible to complete accurately for the following reasons:

A. Reporting institutions do not have readily available the information that would be needed to determine if a loan should be classified as a leveraged loan, and to obtain such data would require the manual review of all of an institution's loan files; and

B. Reporting institutions would be required to classify as subprime on future Reports loans that logically should not be so classified.

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[1] On February 7, 2011, the FDIC Board of Directors adopted the final rule implementing the requirements of Section 331(b) of the Dodd-Frank Act by amending Part 327 of the FDIC's regulations to redefine the assessment base used for calculating deposit insurance assessments on April 1, 2011. (*See* 76 *Fed. Reg.* 10672) (Feb. 25, 2011).

SUMMARY OF KEY CONCERNS

Below is a detailed analysis of each of the concerns highlighted above. The detailed analysis sets forth the issues with the current definitions for leveraged loans and subprime loans that the LBP Rule will cause, if the definitions in the LBP Rule are required to be utilized when completing all future Reports.

A. Information Needed to Accurately Classify a Loan as Leveraged Is Not Readily Available

In the LBP Rule, it was noted by the FDIC that the collection of information on leveraged loans would merely be the expanding upon of "data elements required to compute [these measures] that are gathered during the examination process", since the banks currently had to comply with the 2008 Leveraged Lending Booklet contained in the OCC's Handbook. However, this statement by the FDIC overlooks the fact that many institutions, such as DBTCA, which would be subject to the definition of leveraged loan in the LBP Rule when completing future Reports, are not national banks and therefore are not currently subject to the requirements of the 2008 Leveraged Lending Booklet contained in the OCC's Handbook. Therefore, the loan systems utilized by DBTCA do not track, and have never been required to track, information related to the leverage ratio of a loan in the way the LBP Rule and proposed revisions to the Reports would require. Moreover, institutions have not had time to determine the amount of time and effort that would be required to recalibrate those systems to perform the requisite tracking to obtain the information needed to determine whether a loan should be classified as leveraged. Institutions would need to review each loan file on a one-by-one basis to ascertain whether or not the loan is leveraged; given the number of loans that institutions extend, there would not be adequate time for them to accurately review each loan file before the change to the Report would go into effect. As a result, if the leveraged loan definition provided in the LBP Rule is utilized for the completion of future Reports, it will be difficult for reporting institutions to attest to the accuracy of their Reports.

Finally, the definition of a leveraged loan set forth in the LBP Rule does not allow an institution to take into account other factors that have always allowed an institution to not consider a loan to be leveraged. For example, certain well collateralized loans should not have to be classified as leveraged.

B. LBP Rule on Subprime Loan Captures Loans that Should Never Be Classified as Subprime

Loans that have never been recognized as subprime would now be required to be reported as such on future Reports. For example, it is not uncommon for high net worth clients to occasionally miss one or two payments when they travel, and make the required payment with all applicable late fees upon their return. We do not believe institutions treat such loans as subprime, and may not report the delinquencies in payment to any credit bureau, particularly for

clients that have (i) a very high loan-to-value ratio, (ii) a high credit score and (iii) large deposit account balances.

Additionally, since the reporting institution will not know if other institutions have reported all delinquencies to the credit bureaus, it cannot accurately verify whether or not a customer's loan should be classified as subprime at the time of origination.

CONCLUSION

The definitions of "leveraged loans" and "subprime loans" are unnecessarily prescriptive and will impose burdens on the reporting institutions that are grossly disproportionate to any possible benefits of using the definitions. Therefore, DBTCA strongly urges the Agencies to delay the implementation of the changes to the Reports until the LBP Rule's classification of loans as leveraged or subprime is corrected.

DBTCA realizes that not implementing the Reports changes related to these data elements will mean that these data elements will be missing from the LBP Rule pricing model. However, given the undeniable burdens associated with producing the data required and the near certainty that the data cannot be produced timely or accurately, excluding these data elements until the LBP Rule is amended to include appropriate definitions of "leveraged" and "subprime" would be consistent with the safety and soundness of each reporting institution and the stability of the banking system and, therefore, in the public interest.

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DBTCA appreciates your consideration of the views expressed in this letter. If you have any questions, please contact the undersigned at (212) 250-5081 (e-mail: michael.kadish@db.com) or Jeffrey Herbert at (212) 250-7532 (e-mail: jeffrey.herbert@db.com).

Very truly yours,

Michael L. Kadish
Managing Director & Senior Counsel